

### **REMARKS**

Claims 1-7, 13-16, 41 and 42 are pending in the application. Claims 17-29 are hereby cancelled. The Examiner rejected Claims 13 and 15 and objected to Claims 14 and 16. Claims 1-7, 41 and 42 are allowed.

#### **Claim Rejections**

The Examiner rejected Independent Claim 13, and Claim 15 depending therefrom, as being anticipated by the prior art disclosed in Figs. 1 and 2 of the present application. Applicants have amended Claim 13 for clarity. Amended Claim 13 calls for a bone plate assembly including, *inter alia*, a bone plate having an elongate plate portion having a longitudinal axis, the plate portion having a first hole therein and a second hole therein, a strut screw disposed through the first hole, the strut screw having a longitudinal axis, the longitudinal axis of the elongate plate portion and the longitudinal axis of the strut screw *forming a plane*, and a top screw disposed through the second hole, the top screw *extending angularly to one side of the plane*.

Applicants respectfully submit that Figs. 1 and 2 fail to disclose a top screw extending angularly to one side of a plane formed by a longitudinal axis of the elongate portion and a longitudinal axis of the strut screw as called for in amended Independent Claim 13. Figs. 1 and 2 do not disclose whether, e.g., screws 46a and 46b extend angularly to a plane formed by the longitudinal axis of strut screw 46c and a longitudinal axis of plate portion 48 or are inserted parallel to the plane. As the Examiner agreed, one cannot be sure of the cutting plane used to take the section shown in Fig. 1, and thus, the orientation of screws 46a and 46b with respect to the longitudinal axis of screw 46c cannot be determined. Further, nowhere in the specification are screws 46a and 46b disclosed as extending angularly to one side of a plane formed by the longitudinal axis of strut screw 46c and a longitudinal axis of plate portion 48. Thus, Applicants respectfully submit that Figs. 1 and 2 fail to disclose a top screw extending angularly to one side of a plane formed by a longitudinal axis of the elongate portion and a longitudinal axis of the strut screw as called for in amended Independent Claim 13.

Not only is the claimed arrangement not disclosed by Figures 1 and 2 and the description thereof, but such a configuration is also not suggested by the description of the prior art embodiment depicted in Figures 1 and 2 of the present specification. Referring to the first paragraph of the Detailed Description, Figures 1 and 2 of the present application are provided to illustrate large size fillet radius 54 of bone plate 42. Screws 46a-f are depicted in Figure 1 merely to show that when bone plate 42 is secured to bone 44, large gap 56 exists between plate portion 48 and outer surface 58 of bone 44. Screws 46a and 46b are not depicted or described as extending angularly to one side of a plane formed by a longitudinal axis of strut screw 46c and a longitudinal axis of plate portion 48, nor is such a configuration suggested. Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. §102 rejection of Claims 13 and 15.

**Allowable Subject Matter**

Applicants appreciate the indication of allowable subject matter in Claims 14 and 16. In view of the arguments advanced above, Applicants respectfully submit that Claims 14 and 16 are in condition for allowance with Independent Claim 13 from which they depend. Applicants appreciate the allowance of Claims 1-7, 41 and 42.

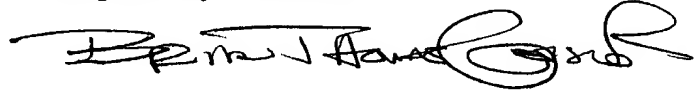
It is believed that the above represents a complete response to the Office Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and such action is earnestly solicited.

In the event Applicants have overlooked the need for an extension of time or payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Application No. 09/939,412  
Amendment dated March 28, 2005  
Reply to Office Action of January 25, 2005

If any questions concerning this application should arise, the Examiner is encouraged to telephone the undersigned at 260.424.8000.

Respectfully submitted,



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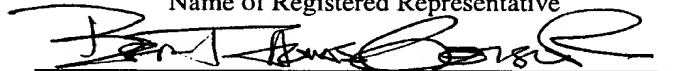
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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: March 28, 2005

BRIAN THOMAS GEISLER, REG. NO. 54,115

Name of Registered Representative



Signature

March 28, 2005

Date